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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Eduardo Cuevas-Hernandez, )

CASE NO. 05-CV-545-TUC-FRZ  
05-CR-562-TUC-FRZ

10 Petitioner, )

**ORDER**

11 vs. )

12 United States of America, )

13 Respondent. )  
14 )  
15 )

16 Petitioner has filed a “Motion for Time Reduction by an Inmate in Federal Custody,  
17 (28 U.S.C. Section 2255).”

18 Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States  
19 District Courts provides, in relevant part, that

20 [i]f it plainly appears from the motion, any attached exhibits,  
21 and the record of prior proceedings that the moving party is not  
22 entitled to relief, the judge must dismiss the motion and direct  
the clerk to notify the moving party.

23 28 U.S.C. foll. § 2255.

24 **Background**

25 Pursuant to a plea agreement, Petitioner entered a plea of guilty to the Indictment,  
26 which charged him with entering and being found in the United States after having been  
27 denied admission, excluded, deported, and removed from the United States, and not having  
28 obtained the express consent of the Attorney General or the Secretary of the Department of

1 Homeland Security to reapply for admission to the United States, in violation of 8 U.S.C.  
2 § 1326, enhanced by 8 U.S.C. § 1326(b)(2).

3 Pursuant to the plea agreement, Petitioner waived “any and all motions, defenses,  
4 probable cause determinations, and objections which [he] could assert to the information or  
5 indictment or to the Court’s entry of judgment against [him] and imposition of sentence upon  
6 [him] providing the sentence is consistent with [the plea] agreement.” In addition, Petitioner  
7 waived “any right to collaterally attack [his] conviction and sentence under Title 28, United  
8 States Code, Section 2255, or any other collateral attack.”

9 The plea agreement provided for a sentencing range of 27-71 months, depending on  
10 Petitioner’s criminal history, if the offense was a Level 24 offense. The Court imposed a  
11 sentence of thirty-three months, the lowest possible sentence under the plea agreement for  
12 Petitioner’s Criminal History Category III.

### 13 Discussion

14 In his motion, Petitioner seeks a reduction of his sentence. He contends that his right  
15 to equal protection is violated by the fact that deportable alien prisoners, unlike their United  
16 States citizen counterparts, are ineligible for a one-year sentence reduction for attending a  
17 drug treatment program during incarceration and early release to a half-way house. His  
18 motion also contains a petition for commutation of sentence, which is not within this Court’s  
19 authority to grant or deny. *See Graham v. Angelone*, 73 F. Supp. 2d 629, 630 (E.D.  
20 Va.1999).

21 Petitioner’s claim for a sentence reduction is waived because, in the plea agreement,  
22 Petitioner waived “any right to collaterally attack [his] conviction and sentence under Title  
23 28, United States Code, Section 2255.”

24 Alternatively, the Ninth Circuit Court of Appeals rejected Petitioner’s argument in  
25 *McLean v. Crabtree*, 173 F.3d 1176 (9th Cir. 1999). In that case, the Ninth Circuit found  
26 that there was no equal protection violation and held that “excluding prisoners with detainers  
27 from participating in community-based treatment programs, and consequently from sentence  
28 reduction eligibility, is at least rationally related to the BOP’s legitimate interest in

1 preventing prisoners from fleeing detainers while participating in community treatment  
2 programs.” *Id.* at 1186.


3  
4 **Conclusion**

5 Accordingly,

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7 **IT IS ORDERED** that Petitioner’s § 2255 Motion (U.S.D.C. document #18 in  
8 CR-05-562-TUC-FRZ) is **DENIED** and this case (CV-05-545-TUC-FRZ) is **DISMISSED**.

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10 **IT IS FURTHER ORDERED** that the Clerk of the Court **SHALL SERVE** a copy  
11 of the Motion and this Order on Respondent and **SHALL SERVE** a copy of this Order on  
12 Petitioner.

13 DATED this 26th day of September, 2005.

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16 FRANK R. ZAPATA  
17 United States District Judge  
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